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**TRANSMISSION COVER SHEET**

TO:           ATTN: Examiner Edward J. Webman  
              Commissioner for Patents  
              P.O. Box 1450  
              Alexandria, VA 22313-1450

**PTO FACSIMILE NUMBER: 571-273-8300**

FROM:       Michael Atkins  
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              New Brunswick, NJ 08933-7003  
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**ALZA FACSIMILE NUMBER: (650) 564-2195**

DATE:       August 31, 2006

RE:           U.S. Serial No.:           10/696,370  
              Filing Date:           October 28, 2003  
              Attorney Docket No.:   AL02164USACON1

**NUMBER OF PAGES INCLUDING THIS COVER SHEET: 17**

1. Notice of Concurrent Litigation (2 pp.)
2. Copy of Complaint Commencing the Litigation (14 pp.)

IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL  
Amy Alwine at (650) 564-2969

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**ALZA CORPORATION**

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<http://www.alza.com>**

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: ALZA CORPORATION Inventor(s): David E. Edgren et al. Title: ANTIDEPRESSANT DOSAGE FORM Application No.: 10/696,370 Filing Date: October 28, 2003	Examiner: Edward J. Webman Group Art Unit: 1616  Atty Docket No. AR02164USACON1
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Submitted via Fax  
ATTN: Examiner Edward J. WEBMAN  
Group Art Unit: 1616  
Fax No.: 571-273-8300

## NOTICE OF CONCURRENT LITIGATION

Dear Sir:

The Examiner is hereby notified of concurrent litigation pending in the United States District Court for the Eastern District of Texas captioned *Alza Corp. v. Wyeth, et al.*, Civil Action No. 9:06-cv-00156-RHC. The litigation involves United States Patent No. 6,440,457, which issued from Application No. 08/068,480 ("the '480 application"). The application before the examiner is a continuation of Application No. 08/442,292, abandoned, which is a divisional of the '480 application. Exhibit I to this Notice is a copy of the complaint commencing the litigation, which was filed on July 26, 2006. No responsive pleading has yet been filed.

Respectfully Submitted,

Dated: 8/31/06

Michael Atkins

Michael Atkins

Registration No. 35,431

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AUG 31 2006UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISIONFILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

JUL 26 2006

ALZA CORPORATION, a Delaware  
corporation,

Plaintiff,

v.

WYETH, a Delaware corporation, and  
WYETH PHARMACEUTICALS, INC., a  
Delaware corporation,

Defendants.

DAVID J. MALAND, CLERK

DEPUTY Rob M. M...C.A. No. 9:06cv156

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Alza Corporation ("Alza"), by its undersigned counsel, brings this action for patent infringement against defendants Wyeth and Wyeth Pharmaceuticals, Inc. (collectively "Defendants") and alleges as follows:

Jurisdiction and Venue

1. This action is based upon the Patent Laws of the United States, Title 35 of the United States Code, for infringement of United States Patent No. 6,440,457 ("the '457 Patent").
2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue properly lies in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).
4. This Court has personal jurisdiction over Defendants.

Exhibit 1

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#### **Parties**

5. Alza is a Delaware corporation with a principal place of business at 1900 Charleston Road, Mountain View, California 94039.

6. On information and belief, Wyeth is a Delaware corporation with a principal place of business at Five (5) Giraldo Farms, Madison, New Jersey 07940.

7. On information and belief, Wyeth Pharmaceuticals, Inc., is a Delaware corporation with a place of business at 500 Arcola Road, Collegeville, Pennsylvania 19426.

8. On information and belief, Wyeth Pharmaceuticals, Inc., is a subsidiary of Wyeth.

9. On information and belief, at least in part for its own benefit, Wyeth directed, authorized, assisted, cooperated with, or participated in the acts of Wyeth Pharmaceuticals, Inc., about which Alza complains.

#### **Claim of Patent Infringement**

10. Alza rec alleges paragraphs 1 through 9 above as if fully set forth herein.

11. On August 27, 2002, the '457 Patent, entitled "Method of Administering Antidepressant Dosage Form," was duly and legally issued by the United States Patent and Trademark Office to Alza as the assignee of the inventors, David Emil Edgren, Gurdish Kaur Bhatti, Zahedeh Hatamkhani, and Patrick S. L. Wong. The '457 Patent remains in full force and effect and will expire no earlier than August 27, 2019. A true and correct copy of the '457 Patent is attached to this Complaint as Exhibit A.

12. Alza has been and remains the owner of all right, title, and interest in and to the '457 Patent.

13. On information and belief, Defendants contributorily infringe and induce infringement of Claim 1 of the '457 Patent under 35 U.S.C. § 271, including but not limited to

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§§ 271(b)-(c) and (f). Defendants contributorily infringe and induce infringement of the '457 Patent through various activities including but not limited to the manufacture, use, sale, and offer for sale of Effexor® XR products in the United States after the '457 Patent issued.

14. On information and belief, Defendants knew of the '457 Patent at all relevant times before making, using, selling, or offering for sale Effexor® XR products.

15. On information and belief, Defendants have in the past offered for sale and sold, and continue to offer for sale and sell Effexor® XR products that constitute a material part of the invention claimed in the '457 Patent and that have no substantial use other than as an infringement of the '457 Patent.

16. On information and belief, Defendants knew and intended that purchasers of Effexor® XR products would use the products in methods so as to infringe the '457 Patent.

17. On information and belief, Defendants have actively induced purchasers of Effexor® XR products to use the products in methods so as to infringe the '457 Patent.

18. On information and belief, purchasers of Effexor® XR products use the products in methods so as to infringe the '457 Patent.

19. On information and belief, Defendants have in the past willfully infringed, and continue to willfully infringe, the '457 Patent through their manufacture, use, sale, and offer for sale of Effexor® XR products.

**Prayer For Relief**

WHEREFORE, Alza prays for a judgment against Defendants as follows:

(a) adjudging that Defendants have infringed the '457 Patent under 35 U.S.C.

§ 271;

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(b) ordering Defendants to account for and pay to Alza all damages caused to Alza by reason of Defendants' infringement of the '457 Patent, together with prejudgment interest on all damages;

(c) increasing the damages three times based on the willful nature of Defendants' infringement under 35 U.S.C. § 284;

(d) granting Alza its reasonable attorney fees under 35 U.S.C. § 285; and

(e) for such further and additional relief as this Court deems just and proper.

Date: July 26, 2006

By: 

J. Thad Heartfield  
Texas Bar No. 09346800  
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*Attorneys for Plaintiff Alza Corporation*

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## **Exhibit A**

**U.S. Patent No. 6,440,457**